

AMENDED IN SENATE MAY 25, 1999

AMENDED IN SENATE APRIL 29, 1999

**SENATE BILL**

**No. 383**

**Introduced by Senator Haynes**

February 11, 1999

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An act to amend Section 1717.5 of the Civil Code, relating to attorney's fees.

LEGISLATIVE COUNSEL'S DIGEST

SB 383, as amended, Haynes. Attorney's fees.

Under existing law, in any action on a contract based on a book account that does not provide for attorney's fees and costs, the prevailing party on the contract is entitled to reasonable attorney's fees and costs, and the court is required to fix the attorney's fees in an amount that does not exceed the lesser of \$660 or 25% of the principal obligation owing under the contract.

This bill would revise these provisions by requiring the court to fix the attorney's fees in an amount that does not exceed the lesser of \$800 for a consumer obligation, *as defined*, and \$1,250 for other obligations *regardless of whether the plaintiff or the defendant is the prevailing party*, or 25% of the principal obligation owing on the contract *only if the plaintiff is the prevailing party*. The bill would ~~define "consumer obligation"~~ *for these purposes also provide that the court may find that the defendant is the prevailing party if the defendant successfully disputed a significant amount of the principal obligation owing under the contract.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1717.5 of the Civil Code is  
2 amended to read:

3 1717.5. Except as otherwise provided by law or where  
4 waived by the parties to an agreement, in any action on  
5 a contract based on a book account, as defined in Section  
6 337a of the Code of Civil Procedure, entered into on or  
7 after January 1, 1987, which does not provide for  
8 attorney's fees and costs as provided in Section 1717, the  
9 party who is determined to be the party prevailing on the  
10 contract shall be entitled to reasonable attorney's fees in  
11 addition to other costs. *The court may find, in its*  
12 *discretion, that the defendant is the prevailing party if the*  
13 *court finds that the defendant successfully disputed a*  
14 *significant amount of the principal obligation allegedly*  
15 *owed under the contract.*

16 Reasonable attorney's fees awarded *the plaintiff as the*  
17 *prevailing party* pursuant to this section shall be fixed by  
18 the court in an amount that shall not exceed the lesser of  
19 eight hundred dollars (\$800) for a consumer obligation  
20 and one thousand two hundred fifty dollars (\$1,250) for  
21 other obligations, or 25 percent of the principal obligation  
22 owing under the contract. ~~If a party is found to have no~~  
23 ~~obligation owing on a book account, the court shall award~~  
24 ~~that party reasonable~~ Reasonable attorney's fees awarded  
25 *to the defendant as the prevailing party pursuant to this*  
26 *section shall be fixed by the court in an amount that shall*  
27 ~~to~~ exceed eight hundred dollars (\$800) for a  
28 consumer obligation and one thousand two hundred fifty  
29 dollars (\$1,250) for other obligations. These attorney's  
30 fees shall be an element of the costs of the suit. The term  
31 consumer obligation means any obligation or alleged  
32 obligation of a person to pay money arising out of a  
33 transaction in which the person obtained money,  
34 property, or services primarily for personal, family, or  
35 household purposes.

1 If there is a written agreement between the parties  
2 signed by the person to be charged, the fees provided by  
3 this section shall not be imposed unless that agreement  
4 contains a statement that the prevailing party in any  
5 action between the parties is entitled to the fees provided  
6 by this section.

7 This section does not apply to any action in which an  
8 insurance company is a party nor shall an insurance  
9 company, surety, or guarantor be liable under this  
10 section, in the absence of a specific contractual provision,  
11 for the attorney's fees and costs awarded a prevailing  
12 party against its insured.

13 This section does not apply to any action in which a  
14 bank, a savings association, a federal association, a state or  
15 federal credit union, or a subsidiary, affiliate, or holding  
16 company of any of those entities, or an authorized  
17 industrial loan company, a licensed consumer finance  
18 lender, or a licensed commercial finance lender, is a  
19 party.

